

ORIGINAL

PROB. 12B  
(7/93)

**United States District Court**

for the

**DISTRICT OF HAWAII**

FILED IN THE  
UNITED STATES DISTRICT COURT  
DISTRICT OF HAWAII

APR 11 2008  
at 10 o'clock and 48 min. M.  
SUE BEITIA, CLERK

**Request for Modifying the Conditions or Term of Supervision  
with Consent of the Offender**

*(Probation Form 49, Waiver of Hearing is Attached)*

Name of Offender: ANDREW GORMAN BOTTS Case Number: CR 02-00398DAE-01

Name of Sentencing Judicial Officer: The Honorable David Alan Ezra  
U.S. District Judge

Date of Original Sentence: 10/20/2003

Original Offense: Information: CONSPIRACY TO IMPORT INTO THE UNITED STATES 100 GRAMS OR MORE OF HEROIN, in violation of 21 U.S.C. §§ 952(a) and 963, a Class B felony

Original Sentence: Forty-four (44) months imprisonment followed by five (5) years supervised release with the following special conditions: 1) That the defendant participate in a substance abuse program, which may include drug testing at the discretion and direction of the Probation Office; 2) That the defendant is prohibited from possessing any illegal or dangerous weapons; 3) That the defendant provide the Probation Office and the Financial Litigation Unit of the U.S. Attorney's Office access to any requested financial information to include submitting to periodic debtor's examinations as directed by the Probation Office; and 4) That the defendant shall pay the fine of \$10,000 immediately and any remaining balance upon release from confinement be paid during the period of supervision on an installment basis according to the collection policy of the Probation Office but at a rate of not less than 10 percent of his monthly gross income. Interest, if applicable, is waived while the defendant is serving his term of imprisonment and shall commence to accrue on any remaining balance upon his release on supervision.

Type of Supervision: Supervised Release Date Supervision Commenced: 9/23/2005

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**PETITIONING THE COURT**

[✓] To modify the conditions of supervision as follows:

**General Condition:** That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervised release (mandatory condition).

**Special Condition No. 1:** That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

**CAUSE**

We request that the Court approve the modifications of the conditions of supervised release based on the U.S. vs. Stephens ruling. The modifications are also necessary to monitor and assist the offender in his adjustment on supervision and in the community.

The offender's adjustment on supervision is evaluated as being satisfactory at this time. However, based on the offender's criminal history category of II and history of substance abuse, it appears that the modifications are warranted. As a result of the U.S. vs. Stephens ruling, it is necessary to modify the General Condition for mandatory drug testing to include the collection of no more than eight valid drug tests per month. The modification is necessary so that the Probation Office can continue to conduct random drug testing following the offender's completion of substance abuse treatment. Random drug testing is necessary given the offender's history of methamphetamine use and to identify a drug relapse and to determine the appropriateness for treatment.

We are also requesting modification of the special condition that requires the offender to participate and comply with substance abuse treatment which includes drug and alcohol testing. This modification reinforces our position that drug testing is a component of substance abuse treatment. The proposed modifications are necessary to monitor these risk factors and to provide the necessary correctional treatment when treatment is appropriate.

The offender began his 5-year term of supervised release on 9/23/2005, which is scheduled to expire on 9/22/2010. He completed his 1 year drug treatment program

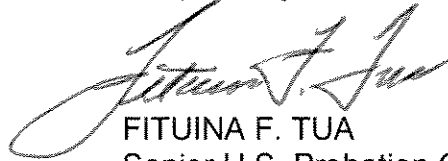
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without difficulty and appears to be drug free. He has maintained stable employment in the food and beverage industry since his release from imprisonment and appears to have a stable residence and relationship with his wife. The offender also satisfied his fine of \$10,000 on 9/6/2007. Although his supervision appears to be satisfactory, we are guarded that he may relapse and revert to old habits. The recommended modifications would help to assist the Probation Office in the supervision of the offender's case.

Attached is a signed Waiver of Hearing to Modify Conditions of Supervised Release. The offender waives his right to a hearing and to assistance of counsel. The offender agrees to the modifications of the conditions of supervised release. The offender's attorney and the U.S. Attorney's Office have been notified of the proposed modifications and have no objections to the modifications.

Respectfully submitted by,



FITUINA F. TUA  
Senior U.S. Probation Officer

Approved by:



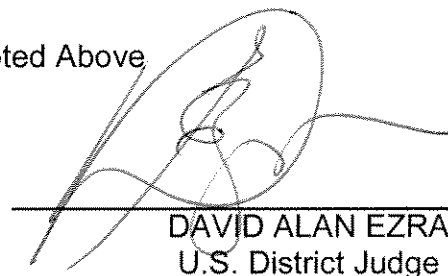
GENE DEMELLO, JR.  
Supervising U.S. Probation Officer

Date: 4/3/2008

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THE COURT ORDERS:

- ☒ The Modifications of Conditions as Noted Above  
☐ Other



DAVID ALAN EZRA  
U.S. District Judge

4-9-08

Date

PROB 49  
(5/96)

# United States District Court

## District of Hawaii

### Waiver of Hearing to Modify Conditions of Probation/Supervised Release and/or Extend Term of Supervision

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release and/or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release and/or to the proposed extension of my term of supervision:

☒ To modify the conditions of supervision as follows:

**General Condition:** That the defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of the commencement of supervision and at least two drug tests thereafter but no more than eight valid drug tests per month during the term of supervision (mandatory condition).

**Special Condition No. 1:** That the defendant shall participate and comply with substance abuse treatment which includes drug and alcohol testing in a program approved by the Probation Office. The defendant is to refrain from the possession and/or use of alcohol while participating in substance abuse treatment.

Witness:

  
FITUINA F. TUA  
Senior U.S. Probation Officer

Signed:

  
ANDREW G. BOTTIS  
Supervised Releasee

3/31/08  
Date